

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH ANTHONY ABEYTA,
Plaintiff,

No. C 07-04660 CW (PR)
ORDER OF SERVICE

v.

SANTA CLARA COUNTY DEPARTMENT OF
CORRECTIONS/SHERIFF DEPARTMENT,
et al.,
Defendants.

Plaintiff Joseph Anthony Abeyta, a state prisoner, has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging constitutional rights violations while incarcerated at Santa Clara County Jail (SCCJ). He has been granted leave to proceed in forma pauperis (IFP).

Venue is proper in this district because the events giving rise to the action occurred at SCCJ, which is located in this district. See 28 U.S.C. § 1371(b).

BACKGROUND

Plaintiff alleges that Defendants Santa Clara County Department of Corrections/Sheriff Department, SCCJ Correctional Sergeant Csabanyi and SCCJ Correctional Officer Anthony Durante violated his constitutional rights. Specifically, Plaintiff claims that Defendant Durante kicked him in the face, used pepper spray on him, and hit him multiple times in the head as well as the facial area while Plaintiff was blindfolded and restrained. Plaintiff claims that he suffered lumps, bruises and cuts. He also alleges that Defendant Csabanyi is liable as a supervisor.

1 Plaintiff seeks injunctive relief and monetary damages.

2 DISCUSSION

3 I. Standard of Review

4 A federal court must conduct a preliminary screening in any
5 case in which a prisoner seeks redress from a governmental entity
6 or officer or employee of a governmental entity. See 28 U.S.C.
7 § 1915A(a). In its review, the court must identify cognizable
8 claims and dismiss any claims that are frivolous, malicious, fail
9 to state a claim upon which relief may be granted or seek monetary
10 relief from a defendant who is immune from such relief. See id.
11 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
12 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
13 699 (9th Cir. 1988).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must
15 allege two essential elements: (1) that a right secured by the
16 Constitution or laws of the United States was violated, and
17 (2) that the alleged violation was committed by a person acting
18 under the color of state law. See West v. Atkins, 487 U.S. 42, 48
19 (1988).

20 II. Legal Claims

21 A. Excessive Force Claim

22 The Due Process Clause of the Fourteenth Amendment protects a
23 post-arraignment pretrial detainee from the use of excessive force
24 that amounts to punishment. Graham v. Connor, 490 U.S. 386, 395
25 n.10 (1989) (citing Bell v. Wolfish, 441 U.S. 520, 535-39 (1979));
26 see Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1197 (9th Cir.
27 2002) ("The Due Process clause protects pretrial detainees from the
28 use of excessive force that amounts to punishment Graham

1 therefore explicates the standards applicable to a pretrial
2 detention excessive force claim in this circuit.") (citations
3 omitted).¹

4 To determine whether particular restrictions and conditions
5 accompanying pretrial detention amount to punishment in the
6 constitutional sense of the word, the court first looks to whether
7 the disability imposed is for the purpose of punishment or whether
8 it is but an incident of some other legitimate governmental
9 purpose. See Bell, 441 U.S. at 538. Absent a showing of an
10 express intent to punish, whether a restriction amounts to
11 punishment will generally turn on whether there is an alternative,
12 rational purpose for the restriction, and whether the restriction
13 then appears excessive in relation to that purpose. See id. If a
14 restriction or condition is not reasonably related to a legitimate
15 goal, i.e., if it is arbitrary or purposeless, the court may infer
16 that the purpose of the action is punishment. See id. at 539.

17 Liberally construed, Plaintiff's allegations state a
18 cognizable claim against Defendant Durante for the use of excessive
19 force.

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21 B. Supervisory Liability Claim

22 Plaintiff sues Defendant Csabanyi in her supervisory capacity.
23 Plaintiff does not allege facts demonstrating that Defendant
24 Csabanyi violated his federal rights, but seems to claim Defendant
25 Csabanyi is liable based on the conduct of her subordinate,

26
27 ¹ Cf. Pierce v. Multnomah County, Oregon, 76 F.3d 1032, 1043
28 (9th Cir. 1996) (Fourth Amendment reasonableness standard applies to
allegations of use of excessive force against pre-arraignment
detainee).

1 Defendant Durante. There is, however, no respondeat superior
2 liability under § 1983 solely because a defendant is responsible
3 for the actions or omissions of another. See Taylor v. List, 880
4 F.2d 1040, 1045 (9th Cir. 1989). A supervisor generally "is only
5 liable for constitutional violations of his subordinates if the
6 supervisor participated in or directed the violations, or knew of
7 the violations and failed to act to prevent them." Id. A
8 supervisor may also be held liable if he or she implemented "a
9 policy so deficient that the policy itself is a repudiation of
10 constitutional rights and is the moving force of the constitutional
11 violation." Redman v. County of San Diego, 942 F.2d 1435, 1446
12 (9th Cir. 1991) (en banc).

13 Plaintiff's claim against Defendant Csabanyi is therefore
14 dismissed with leave to amend. He may file an amendment to the
15 complaint that alleges supervisory liability under the standards
16 explained above.

17 C. Municipal Liability

18 Finally, Plaintiff has not alleged grounds for municipal
19 liability against Defendant Santa Clara County Department of
20 Corrections/Sheriff Department based on any theory other than that
21 of respondeat superior. This is not a sufficient ground for
22 municipal liability. See Monell v. Dep't of Social Servs., 436
23 U.S. 658, 691 (1978) (local governments cannot be liable under
24 § 1983 under respondeat superior theory). Accordingly, Plaintiff's
25 claim against Defendant Santa Clara County Department of
26 Corrections/Sheriff Department is DISMISSED with leave to amend.
27 If Plaintiff can in good faith assert facts which state
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1 constitutionally cognizable claims for relief against this
2 municipal Defendant he may include them in his amendment to the
3 complaint.

4 CONCLUSION

5 For the foregoing reasons, the Court orders as follows:

6 1. Plaintiff has stated a cognizable claim against Defendant
7 Durante for the use of excessive force.

8 2. Plaintiff's supervisory liability claim against Defendant
9 Csabanyi is DISMISSED WITH LEAVE TO AMEND as indicated above.

10 3. Plaintiff's municipal liability claim against Defendant
11 Santa Clara County Department of Corrections/Sheriff Department is
12 DISMISSED WITH LEAVE TO AMEND as indicated above.

13 4. Within thirty (30) days of the date of this Order
14 Plaintiff may file amended supervisory and municipal liability
15 claims against Defendants Csabanyi and Santa Clara County
16 Department of Corrections/Sheriff Department as set forth above in
17 Sections II(B) and (C) of this Order. (Plaintiff shall resubmit
18 only those claims and not the entire complaint.) The failure to do
19 so will result in the dismissal without prejudice of the
20 supervisory liability claim against Defendant Csabanyi and the
21 municipal liability claim against Defendant Santa Clara County
22 Department of Corrections/Sheriff Department.

23 5. The Clerk of the Court shall mail a Notice of Lawsuit and
24 Request for Waiver of Service of Summons, two copies of the Waiver
25 of Service of Summons, a copy of the complaint and all attachments
26 thereto (docket no. 1) and a copy of this Order to Defendant SCCJ
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1 Correctional Officer Anthony Durante (#2406). The Clerk of the
2 Court shall also mail a copy of the complaint and a copy of this
3 Order to the Office of the Santa Clara County Counsel.
4 Additionally, the Clerk shall mail a copy of this Order to
5 Plaintiff.

6 6. Defendant is cautioned that Rule 4 of the Federal Rules
7 of Civil Procedure requires Defendant to cooperate in saving
8 unnecessary costs of service of the summons and complaint.
9 Pursuant to Rule 4, if Defendant, after being notified of this
10 action and asked by the Court, on behalf of Plaintiff, to waive
11 service of the summons, fail to do so, Defendant will be required
12 to bear the cost of such service unless good cause be shown for
13 Defendant's failure to sign and return the waiver form. If service
14 is waived, this action will proceed as if Defendant had been served
15 on the date that the waiver is filed, except that pursuant to Rule
16 12(a)(1)(B), Defendant will not be required to serve and file an
17 answer before sixty (60) days from the date on which the request
18 for waiver was sent. (This allows a longer time to respond than
19 would be required if formal service of summons is necessary.)
20 Defendant is asked to read the statement set forth at the foot of
21 the waiver form that more completely describes the duties of the
22 parties with regard to waiver of service of the summons. If
23 service is waived after the date provided in the Notice but before
24 Defendant has been personally served, the Answer shall be due sixty
25 (60) days from the date on which the request for waiver was sent or
26 twenty (20) days from the date the waiver form is filed, whichever
27 is later.
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1 7. Defendant shall answer the complaint in accordance with
2 the Federal Rules of Civil Procedure. The following briefing
3 schedule shall govern dispositive motions in this action:

4 a. No later than thirty (30) days from the date the
5 answer is due, Defendant shall file a motion for summary judgment
6 or other dispositive motion. The motion shall be supported by
7 adequate factual documentation and shall conform in all respects to
8 Federal Rule of Civil Procedure 56. If Defendant is of the opinion
9 that this case cannot be resolved by summary judgment, Defendant
10 shall so inform the Court prior to the date the summary judgment
11 motion is due. All papers filed with the Court shall be promptly
12 served on Plaintiff.

13 b. Plaintiff's opposition to the dispositive motion
14 shall be filed with the Court and served on Defendant no later than
15 thirty (30) days after the date on which Defendant's motion is
16 filed. The Ninth Circuit has held that the following notice should
17 be given to pro se plaintiffs facing a summary judgment motion:

18 The defendants have made a motion for summary
19 judgment by which they seek to have your case dismissed.
20 A motion for summary judgment under Rule 56 of the
21 Federal Rules of Civil Procedure will, if granted, end
your case.

22 Rule 56 tells you what you must do in order to
23 oppose a motion for summary judgment. Generally, summary
24 judgment must be granted when there is no genuine issue
of material fact -- that is, if there is no real dispute
25 about any fact that would affect the result of your case,
the party who asked for summary judgment is entitled to
26 judgment as a matter of law, which will end your case.
When a party you are suing makes a motion for summary
27 judgment that is properly supported by declarations (or
other sworn testimony), you cannot simply rely on what
28 your complaint says. Instead, you must set out specific
facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided

1 in Rule 56(e), that contradict the facts shown in the
2 defendant's declarations and documents and show that
3 there is a genuine issue of material fact for trial. If
4 you do not submit your own evidence in opposition,
5 summary judgment, if appropriate, may be entered against
6 you. If summary judgment is granted [in favor of the
7 defendants], your case will be dismissed and there will
8 be no trial.

9 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
10 banc).

11 Plaintiff is advised to read Rule 56 of the Federal Rules of
12 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
13 (party opposing summary judgment must come forward with evidence
14 showing triable issues of material fact on every essential element
15 of his claim). Plaintiff is cautioned that because he bears the
16 burden of proving his allegations in this case, he must be prepared
17 to produce evidence in support of those allegations when he files
18 his opposition to Defendant's dispositive motion. Such evidence
19 may include sworn declarations from himself and other witnesses to
20 the incident, and copies of documents authenticated by sworn
21 declaration. Plaintiff will not be able to avoid summary judgment
22 simply by repeating the allegations of his complaint.

23 c. If Defendant wishes to file a reply brief, Defendant
24 shall do so no later than fifteen (15) days after the date
25 Plaintiff's opposition is filed.

26 d. The motion shall be deemed submitted as of the date
27 the reply brief is due. No hearing will be held on the motion
28 unless the Court so orders at a later date.

8. Discovery may be taken in this action in accordance with
the Federal Rules of Civil Procedure. Leave of the Court pursuant

1 to Rule 30(a)(2) is hereby granted to Defendant to depose Plaintiff
2 and any other necessary witnesses confined in prison.

3 9. All communications by Plaintiff with the Court must be
4 served on Defendant, or Defendant's counsel once counsel has been
5 designated, by mailing a true copy of the document to Defendant or
6 Defendant's counsel.

7 10. It is Plaintiff's responsibility to prosecute this case.
8 Plaintiff must keep the Court informed of any change of address and
9 must comply with the Court's orders in a timely fashion.

10 11. Extensions of time are not favored, though reasonable
11 extensions will be granted. Any motion for an extension of time
12 must be filed no later than fifteen (15) days prior to the deadline
13 sought to be extended.

14 IT IS SO ORDERED.

15 DATED: 12/4/08



16 CLAUDIA WILKEN

17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH A. ABEYTA,

Case Number: CV07-04660 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

SANTA CLARA COUNTY DEPT. OF
CORRECTIONS et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph Anthony Abeyta CHY429
Santa Clara City Correction Department
03026633
885 N. San Pedro Street
San Jose, CA 95110

Dated: December 4, 2008

Richard W. Wieking, Clerk

By: Sheilah Cahill, Deputy Clerk